



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 438

IN THE MATTER
OF
JOHN L. GRIFFITH

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and John L. Griffith (Griffith) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On December 12, 1990, the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, involving Griffith, an environmental engineer with the Department of Environmental Management (DEM). The Commission concluded its inquiry on September 11, 1991, and by a majority vote, found reasonable cause to believe that Griffith violated G.L. c. 268A.

The Commission and Griffith now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Mr. Griffith was a DEM employee working for the Office of Safe Waste Management (OSWM). His responsibilities as an OSWM engineer included analyzing hazardous waste management and technologies in proposed facilities for their conformance with sound engineering principals and for environmental impact.

2. In April 1987, Clean Harbors Inc. (CHI) filed a Notice of Intent with the Hazardous Waste Facility Site Safety Council (Safety Council)^{1/} regarding a proposal to construct a rotary kiln incinerator (RKI) in Braintree. (The RKI would dispose of hazardous waste.) The Safety Council gave initial approval to the project in October 1987.

The project then moved to the so-called "MEPA stage," which involved compliance with the Massachusetts Environmental Protection Act. This involved two simultaneous tracks. One was the development of a standard Environmental Impact Report (EIR) to be reviewed by the Executive Office of Environmental Affairs (EOEA). Parallel to that, the Safety Council developed its own analysis which included input into the EIR.

The scope of the EIR was agreed upon in April of 1988. Thereafter, CHI developed the EIR in three phases. The first, submitted in the summer of 1988, was a study protocol which described how they were going to do their analysis. The second stage, developed in the fall of 1988, concerned baseline reports. The baseline reports involved CHI's analyzing the status quo at the time. The final stage involved developing impact studies; in other words, how the incinerator would affect what was there. As CHI finished draft phases of the EIR, it filed copies with the Safety Council and various community groups.^{2/}

The role of OSWM in the foregoing regulatory process was as follows: DEM is a statutory member of the Safety Council. The Commissioner or his designee is an official member of the Council. The DEM commissioner designated the OSWM director as his designee to sit on the Council. Consequently, OSWM received and reviewed the CHI study protocol, baseline reports, and impact studies. Griffith's job, as an OSWM engineer, was to review and comment on each of the submissions, as is further discussed below.

3. At all times relevant herein, Griffith taught courses in business management at Northeastern University.
4. In or about January or February 1988, Griffith began discussing with CHI's training and development representative the possibility of his teaching management training courses for CHI personnel.
5. After some back and forth discussion, Griffith submitted a written proposal to CHI on October 25, 1988, to teach 22 training sessions. On October 26, 1988, Griffith and the CHI representative further discussed the training arrangement. On October 27, 1988, the CHI representative made a formal offer to Griffith as to the scope and compensation of such a training arrangement. By the end of November 1988, Griffith and CHI agreed on the scope of his employment arrangement with CHI.^{3/} Pursuant to the above arrangement, Griffith taught courses at CHI on a once a week basis beginning on January 11, 1989, and ending on May 9, 1989.
6. Griffith billed CHI for and was paid \$7,723.50 for teaching the foregoing courses.
7. By memo dated August 17, 1988, Griffith wrote to the OSWM Director offering certain comments on CHI's draft study protocol.^{4/} The memo made specific recommendations as to actions that CHI should take.^{5/}
8. Beginning on November 22, 1988, Griffith, pursuant to the OSWM Director's request, began a review of the CHI baseline report.
9. By memo dated December 29, 1988, Griffith wrote to the OSWM Director evaluating the above CHI baseline report. In his memo, Griffith raised a number of questions regarding the adequacy of the report.
10. Except as otherwise permitted in that section,^{6/} §6 of G.L. c. 268A prohibits a state employee from participating in a particular matter in which, to his knowledge, an organization with which he is negotiating for or has an arrangement concerning prospective employment has a financial interest.
11. The determinations by OSWM regarding CHI's various RKI submissions were particular matters as defined in G.L. c. 268A, §1(k).
12. When, in February of 1988, Griffith began discussing with CHI an arrangement by which he would provide management training courses for CHI personnel, he was negotiating for employment with CHI within the meaning of c. 268A, §6.^{7/}
13. Griffith and CHI continued to negotiate such an arrangement between February 1988 and November 1988 (when an agreement was reached). Notwithstanding the fact that these negotiations were occurring, Griffith participated in the review of the CHI RKI proposal by preparing the August 17, 1988 written evaluation memo of CHI's draft study protocol.
14. CHI had an obvious financial interest in OSWM's determination as to the adequacy of CHI's draft study protocol.
15. Therefore, Griffith violated G.L. c. 268A, §6 when he so participated after beginning negotiating for employment with CHI.
16. As stated above, by no later than the end of November 1988, Griffith and CHI had agreed upon an arrangement for employment (which would begin in January 1989). Nevertheless, Griffith continued to participate in the review of CHI's RKI proposal by, beginning on November 17, 1988 and culminating in his December 29, 1988 memo to the OSWM Director, reviewing the CHI baseline report. Again, CHI had an obvious financial interest in OSWM's determination as to the adequacy of the baseline report. Therefore, Griffith violated §6 when he so participated while having an arrangement for employment with CHI.
17. The Commission has found no evidence to suggest that in his capacity as a DEM employee, Griffith acted to provide any special or favorable treatment to CHI while he was negotiating for or had an arrangement for employment with CHI.^{8/}

In view of the foregoing violations of G.L. c. 268A, §6, the Commission has determined that the public interest

would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Griffith:

1. that he pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil fine for violating G.L. c. 268A, §6; and

2. that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in this or any related administrative or judicial proceeding to which the Commission is or may be a party.

Date: March 3, 1992

¹Pursuant to G.L. c. 21D, §4, the Safety Council's responsibilities include reviewing all proposals for the construction and operation of hazardous waste facilities on proposed sites.

²After these dealings with the Safety Council and community groups, CHI filed their EIR with the EOEA Secretary in July of 1989. The Secretary determined that the EIR was not adequate. He asked for more information. CHI prepared a supplemental EIR which was filed in January of 1990. The Secretary ruled that the EIR was adequate in May, 1990. In September 1990, however, the EOEA Secretary determined that the site was not suitable. Consequently, the RKI was not built.

³It is unclear exactly when this agreement was reached.

⁴It is unclear when Griffith first began reviewing the draft study protocol.

⁵For example, he recommended that the background air quality be considered.

⁶Section 6 provides the following exemption for a state employee whose duties require participation in a particular matter in which there is a prohibited financial interest: (1) he must advise his appointing official and this Commission in writing of the nature and circumstances of the particular matter and make full disclosure of his financial interest; and (2) the appointing official should then assign the matter to another employee, assume responsibility for the matter, or make a written determination (and file it with this Commission) that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services.

⁷As the Commission has explained in Advisory No. 14:

Although the term "negotiating for prospective employment" is not defined in G.L. c. 268A, the Commission and courts have given a common sense meaning to negotiating [footnote omitted]. The key operating principle is mutuality of interest. Where a public employee and a person or organization have scheduled a meeting to discuss the availability of a position and the employee's qualifications for the position, the employee will be regarded as negotiating for prospective employment with that person or organization. *See, EC-COI-82-8* (where an employee affirmatively responds to an inquiry from a prospective employer and meets with the employer, the employee is negotiating for future employment); Department of the Attorney General, **Personnel Manual** (1988), P. E-8 ("employment negotiations exist as soon as both the employee and the prospective employer show any interest in the employee working for the prospective employer. For example, disclosure must be made as soon as an employment interview is scheduled.")

⁸No such evidence, however, is necessary to establish a §6 violation. As the Commission said *In re Kurkjian*, 1986 SEC 260, 262, "Section 6, like many of the other sections of G.L. c. 268A, is intended to prevent any questions arising as to whether the public interest has been served with the single-minded devotion required of public employees."